

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

KENNETH M. GRAY,

Petitioner,

v.

Case No. 10-C-421

**JUDY SMITH,
Warden of Oshkosh Correctional Institution,**

Respondent.

DECISION AND ORDER

Pro se Petitioner Kenneth M. Gray (“Gray”), who is currently confined in the at the Oshkosh Correctional Institution (“OCI”), filed a petition and affidavit for leave to proceed *in forma pauperis* on his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. To authorize a litigant to proceed *in forma pauperis*, the Court must make two determinations: 1) whether the litigant is unable to pay the costs of commencing the action; and 2) whether the action is frivolous or malicious. 28 U.S.C. § 1915(a)(1) & (e)(2). The Court is obligated to give the petitioner’s pro se allegations, however inartfully pleaded, a liberal construction. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

Gray’s affidavit of indigence indicates that he was last employed April 6, 2010, and his monthly income was \$19.20. Additionally, his trust account activity statement shows

that as of May 7, 2010, Gray had \$93.10 in his regular account at OCI. Gray also indicates that he has no monthly expenses. Given that all Gray's basic needs are provided for by the correctional institution, this Court concludes that Gray does not qualify under Section 1915(a) as an indigent unable to pay the \$5.00 filing fee for commencing the instant action for a writ of habeas corpus. Thus, if Gray wants the Court to give further consideration to his petition, he must pay the \$5.00 filing fee. Gray is further advised that if he fails to pay the filing fee by June 21, 2010, this action will be dismissed without prejudice for failure to prosecute pursuant to Civil Local Rule 41(c) (E.D. Wis.).

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Gray's petition for leave to proceed *in forma pauperis* (Docket No. 2) is
DENIED.

If Gray intends to proceed with his petition, Gray **MUST** pay the \$5.00 filing fee by **June 21, 2010.**

Dated at Milwaukee, Wisconsin this 20th day of May, 2010.

BY THE COURT

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
U.S. District Judge